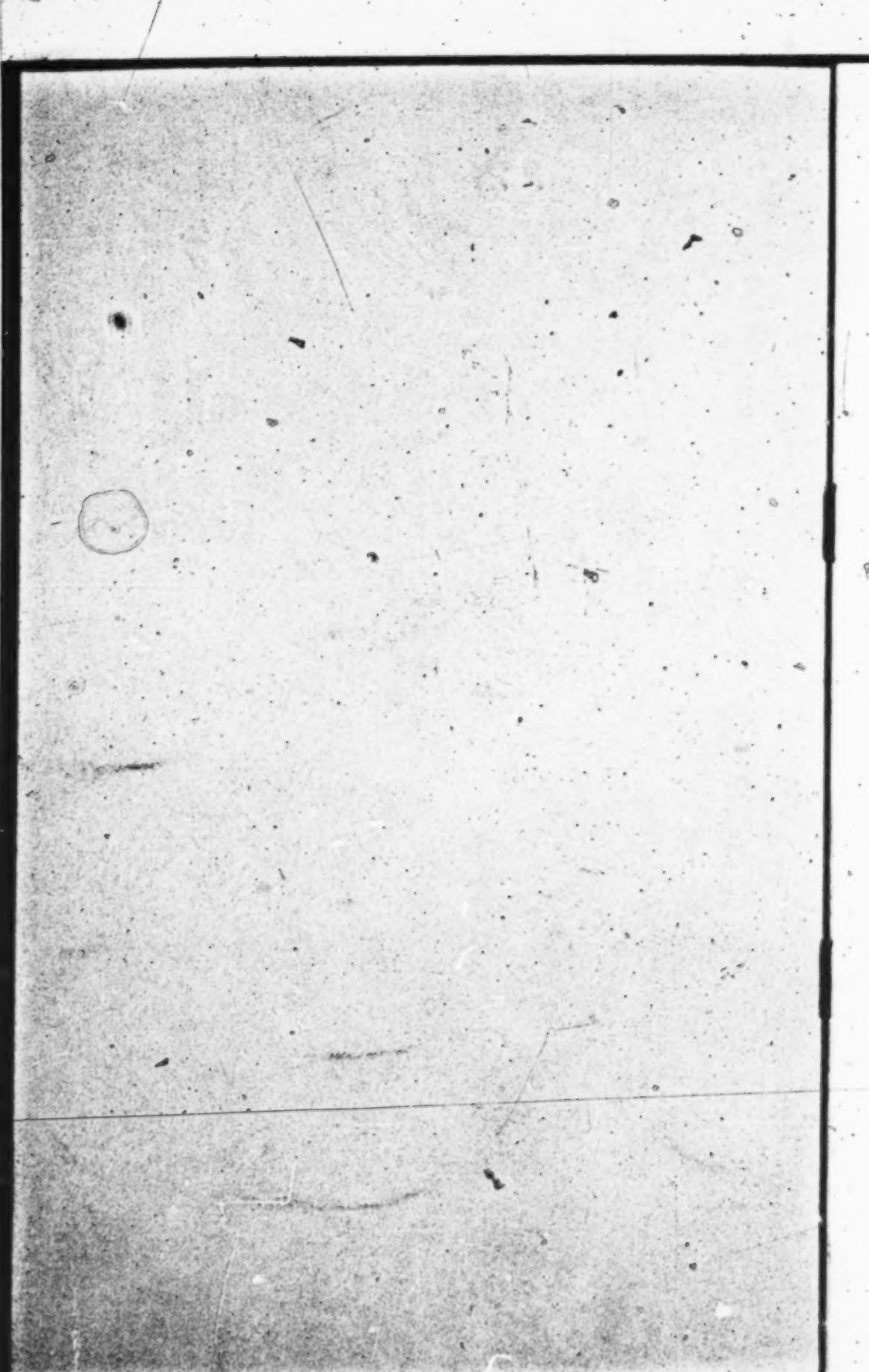

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 273

NEW JERSEY CHAPTER, AMERICAN INSTITUTE OF PLANNERS, etc., *et al.*,

Appellants,

vs.

NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS, *et al.*,

Respondents.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS

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On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS

Respondents Lee T. Purcell and Donald R. Goodkind pursuant to Rule 16 move before this Court to dismiss the Appeal taken by the appellants, the New Jersey Chapter of the American Institute of Planners and six individuals, on the ground that the Appeal raises no substantial federal question.

Introductory Statement

Appellants take the present appeal from a judgment of the Supreme Court of New Jersey entered on February 20, 1967 reversing an order of the Superior Court, Chancery Division, Mercer County, which invalidated as unconstitutional a provision of the New Jersey Professional Planners Licensing Act, L. 1962, c. 109, N.J.S.A. 45:14A-1, *et seq.*, the provisions of which are set forth in full in Appendix B to appellants' brief. Respondents contend that the federal question projected in appellants' brief is so completely lacking in substance and merit that the within appeal should be dismissed forthwith.

Question Presented

Where a State Legislature has determined that the professions of engineering, architecture and land surveying are closely related to and overlapping with the profession of professional planning and that possession of licenses in these related fields insures to the people of the State of New Jersey at least minimal competence in the practice of planning, may that State consistent with the equal protection and due process clause of the Fourteenth Amendment so provide, by stipulating that those who possess licenses in these related fields be automatically licensed as professional planners?

Statement of Facts

To avoid unnecessary length and useless repetition, respondents adopt the comprehensive description of the statutory scheme of regulating the field of professional planning contained in the decision of the Supreme Court of New Jersey reproduced in the Appendix to appellants' brief at page App. A, p. 27a. In the interests of clarity

in presentation, however, the challenged provision of that Act will be quoted in full:

> "The board upon application therefor and the payment of the application and license fees fixed by this act shall issue a certificate of license as a professional planner to any duly licensed professional engineer, licensed land surveyor or registered architect of New Jersey." (App. A, p. 31a)

Before isolating the readily definable issue presented to this Court, it is advisable to delineate those areas which are not subject to any dispute. First, appellants do not deny the power of the State to impose a system of regulation upon the practice of professional planning. Indeed, as the opinion of the Supreme Court sharply notes, the impetus for such derived not from the public at large but from the planners themselves. (App. A, p. 38a):

> "As was the case in . . ., the legislative history recounted above shows that the agitation for the legislation came, as so frequently happens, from those who described themselves as professional planners, and not because of any public demand. It seems fair to say also that their principal motivation was self-interest rather than public interest."

The reason underlying this motivation was given recognition by the Supreme Court of New Jersey when it accepted as uncontradicted that there exists at present a shortage of persons engaged in planning, whatever may be their professional qualifications. To fasten a monopolistic grip upon a profession whose members are too few to satisfy present needs can only redound to the financial benefit of those few practitioners at the public's expense.

On the other hand, the decision of the New Jersey Supreme Court recognizes minimal need for the regulation of this profession (App. A, pp. 38a-39a):

> "The argument has been advanced persuasively that there is no public need for the exercise of the regulatory police power in this occupational area. It is said that the governmental units (which are practically the only clients of the planners), unlike the ordinary member of the public, are sufficiently sophisticated to know the individuals and organizations that are competent or experienced in planning and redevelopment. Moreover, defendants point out that selection of planners has been made the subject of executive regulation at various levels of government, state and federal, which makes it extremely unlikely that an unqualified person representing himself as a planner would be employed . . ."

Thus it can be concluded, with much logic, that the Legislature of New Jersey was dealing with a profession, the practice of which was already subject to considerable regulation from government and that, therefore, stringent qualifications for entry therein were not only unnecessary but contraindicated by virtue of the insufficient number of practitioners meeting qualifications satisfactory to appellants.

Second, appellants themselves concede "that there is [illegible] between the profession of city planning and [illegible]" (p. 9). Indeed, appellants [illegible] of such interrelation with no [illegible] (p. 9). Appellants' argument offered in [illegible] additional, unconstitutionality concerns itself with [illegible] the distinction between these "closely related" occupational areas rather than with their areas of identity.

In the context thus described—a fledging profession with numbers insufficient to satisfy public need already subject to government regulation which profession serves not individual and unsophisticated members of the public but local governmental entities—a discussion of the precise issue raised by appellant's brief can now be discussed.

Two constitutional transgressions are asserted—violation of the equal protection and due process clauses of the Fourteenth Amendment. Both, however, appear to stand on common ground and, therefore, can be largely discussed together. That common ground is the asserted lack of reasonable relation between the automatic licensing provision and the purpose of the legislation (p. 23) with the alleged result that many "unqualified" persons are permitted automatic entry into the planning profession while "qualified" planners must submit themselves to an examination in order to practice.

The vice in appellants' position as thus stated is manifest. Prior to the enactment of the Planners Licensing Law, anyone was permitted to offer his services as a planner. Passage of this Act excluded most of the patently unqualified from doing so presumably for the purpose of excluding those whose practice would endanger the public health, welfare and safety. In that respect the means employed by the Legislature clearly bear a valid relationship to the purpose for which the legislation was enacted—protection of the health, welfare and safety of the citizens of this State—and fall so clearly within prescribed constitutional limits as to deprive the federal question raised of any substance or merits whatever. The question of classification raised is not, it is submitted, even debatable.

The assailed provisions, in this view, are not ends in and of themselves, but means to the legi-

timate end of conserving the highways. The extent to which, as means, they conduce to that end, the degree of their efficiency, the closeness of their relation to the end sought to be attained, are matters addressed to the judgment of the legislature, and not to that of the courts. It is enough if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the means and the end." *Stephenson v. Binford*, 287 U. S. 251, 77 L. Ed. 288 (1932).

The problem resulting in the present lawsuit, however, finds its genesis in the attempted imposition of standards for practice appellants find desirable in lieu of those standards the Legislature deemed sufficient to implement the statute's purpose in the context of New Jersey's demonstrated need for planners. The aim of appellants' organization and the interest of each individual planner is, of course, to promote the development of their profession by more stringent requirements to practice, more adequate educational facilities to train practitioners and other measures designed to enhance the results they try to achieve. Such is an entirely commendable interest and in keeping with a normally professional outlook. The Legislature's interest, however, is derived from different motivation. Its concern is not with the internal standards of excellence a professional organization desires to maintain but with protection of the public health, welfare and safety by forbidding the practice only to those who might endanger it. Briefly stated, appellants are interested in setting the highest possible standards while the Legislature's purpose is to set a standard consistent with the public welfare taking into account need for regulation, need for planners and the supply thereof as well as quality of expertise. Such

decisions lie peculiarly within the legislative realm, and courts are ill-equipped and normally disinclined to judge their wisdom.

It may well be that several specialities within the field of engineering have little concern with matters of planning. It has been noted that chemical, mechanical and ceramic engineers, among others, make little claim to expertise in planning. Such observation, however, indicates a basic misconception of the licensing machinery devised to regulate most of the major professions today. A ceramic engineer holds the same license as a civil engineer, and yet it is to be doubted whether each could trade their respective areas of specialization without losing much of their acquired competence. A competent radiologist would scarcely undertake delicate brain surgery, and yet both are licensed physicians. There are few negligence trial lawyers today who would feel at home drafting a trust indenture involving complex tax problems, and yet they are authorized to do so by law.

No doubt a legislature could fragment the various major professions and test the competence of their practitioners within more limited areas of specialization. The fact, however, that this has not been done does not render these licensing laws unconstitutional. In the present case, the statute under examination has given definition to the planning profession for the purposes of the scheme of regulation imposed thereby. As part of this profession, the Legislature included duly licensed engineers, architects and land surveyors. The fact that appellants do not agree with this statutory definition of the profession does not, however, render it unconstitutional.

It is indeed difficult to avoid venturing into arguments directed to the wisdom of the challenged legislation be-

[illegible] seemed to be the prime concern of the trial court. Perhaps this provision is not wise. Perhaps the State would be better off with all engineers excluded from licensed as planners. Perhaps not. Appellants are in no better a position to make such a determination than was the trial court below. Nor is the issue even relevant. As stated by the court in *Berner* v. *Union Twp.*, 55 N. J. Super. 523 (Law Div. 1959):

"It has been seen that the Courts will not pass judgment upon the wisdom of the legislature in enacting a law but will only ascertain if the legislature has [illegible] within its power."

Thus, any quarrel with the wisdom of an item of legislation should be directed to the Legislature and not to the courts.

Appellants claim that the challenged provision denies them equal protection of the laws. How this alleged unequal treatment manifests itself is difficult to discern. Those [illegible] by a specific planning background to [illegible] as professional planners can scarcely complain [illegible] that qualify, by virtue of their training [illegible] licensing provision. The training [illegible] under N.J.S.A. 45:14A-1, *et seq.*, [illegible] is no more arduous than that required [illegible] *et seq.* To those considering [illegible] several avenues of approach. They may decide to specialize [illegible] seek a broader approach [illegible] one

[illegible] is drawn [illegible]

narians, accountants, librarians, all of them members of licensed professions, were not included as part of the profession of planning as defined by the legislation. Rather, to vindicate interests of the public the Legislature apparently deemed vital, members of professions termed closely related to planning were included therein. Even appellants concede their interrelatedness in certain respects. That being so, appellants' assertion that inclusion of engineers, architects and land surveyors within the statutory definition of planners lacks rational connection to the purposes the Act was designed to serve is clearly without substance.

A finding of a legislature, in this case that members of the three related professions possess qualifications for planning sufficient for purposes of the public welfare, is presumed to have the support of facts known to it "unless facts judicially known or proved preclude that possibility." *Clark* v. *Paul Gray*, 306 U. S. 583, 59 S. Ct. 744, 83 L. Ed. 1001 (1939). Several possible facts and circumstances which may well have motivated the legislators to include the related professions within the statutory profession of planning have been already suggested in this brief. The decision of the New Jersey Supreme Court from which appeal is here being taken alludes to the untradicted evidence of such circumstances as explaining and clarifying the thinking of the legislators upon this subject (App. A, p. 48a):

"... In this connection, however, the evidence is uncontradicted that at present there is a shortage of persons engaging in planning, whatever may be their professional, educational or experiential background. According to the Executive Director of the American Society of Planning Officials, the Society advertised about 1300 professional planning jobs dur-

ing 1965, and at the end of the year about 400 of them were open and unfilled. That number was higher than at the end of 1964, which in turn was higher than in 1963. It may well be that the Legislature felt the need could be alleviated by admitting to the practice of planning without examination those persons who had already qualified for licenses in the related professional fields of engineering, land surveying and architecture. Under all of the circumstances it cannot be said reasonably that planning did not have its gestative stirrings and its early and continued practice in the three exempted disciplines, particularly in engineering and architecture. Nor can it be said on the record before us that it was wholly arbitrary and without reasonable basis for the Legislature to regard licensed members of the three professions as possessing sufficient minimal qualifications for planning to warrant treatment as a distinct class and to grant them exemption from the licensing requirements of the professional planners act, if they wish to practice in that field. Cf. Watson v. Maryland, 218 U. S. 173, 54 L. ed. 987 (1910); Williamson v. Lee Optical of Okla., supra; McGaughton v. Johnson, supra; Sproles v. Binford, supra; Peet Stock Remedy Co. v. McMullen, 33 F. 2d 580 (8th Cir. 1929)."

In so finding, the Supreme Court of New Jersey accurately performed a purely judicial function, the nature of which has been carefully explored by the United States Supreme Court on many occasions:

"[I]t is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided.

Its function is only to determine whether it is possible to say that the legislative decision is without rational basis." *Clark v. Paul Gray, supra.*

The present legislation comes before the court favored with a strong presumption as to its constitutionality. Accordingly, it is to be assumed that the Act was directed to an exigency made manifest by experience and its remedy contained therein was adopted in accordance with the known need. *Ward & Gow* v. *Krinsky*, 259 U. S. 503, 42 S. Ct. 529, 66 L. Ed. 1033 (1922). Such assumption need not, however, be indulged in in the present case. Uncontradicted evidence introduced into the record by the appellants themselves amply discloses circumstances of public need which might well have motivated the New Jersey Legislature in shaping the challenged legislation to the form it finally took. Reference is, of course, made to the present shortage of planners in face of a growing need together with minimal need for regulation. At the very least, it cannot be said that appellants met this heavy burden of establishing facts which "preclude" the "possibility" that the challenged legislation enjoyed factual support.

It is for the foregoing reasons that respondents contend that no substantial federal question has been raised by the present appeal. Appellants clearly have suffered no unequal treatment before the law. They must demonstrate their qualifications to the Board created by this legislation as must those architects, engineers and land surveyors who seek licenses as planners. Training for these three related professions is certainly no less arduous and time consuming than the training which those who call themselves planners must demonstrate. Indeed, planners are free to pursue studies in architecture and engineering as an avenue

to licensing as planners. In no sense can the members of the three related professions, those presently training therefor or those who plan in the future to do so be regarded as "favored" although appellants persist in use of that characterization.

There exists, therefore, no basis for complaint by appellants. Quarrels concerning standards of qualification will always occur. The decision, however, as to whether such standards should be stringent, lax or somewhere in between is a matter for the Legislature and cannot be made in a vacuum or in terms absolute. It must be made in light of existing supply of the most qualified to fill existing and projected future needs, the necessity for regulation and the danger to the public welfare to be anticipated by unqualified persons offering their services to government as planners. The decision arrived at by the New Jersey Legislature is embodied in the challenged legislation and is so clearly within constitutional requirements as to deprive the "federal question" raised of any substance whatever.

CONCLUSION

For the foregoing reasons as well as those reasons given by the Supreme Court of New Jersey, it is respectfully submitted that the present appeal be dismissed.

Respectfully submitted,

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